

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:06CV259

ANNA LOU BARKER,

Petitioner,

Vs.

ALBERTO GONZALEZ, *et al.*,

Respondents.

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ORDER

THIS MATTER is before the Court on the Petitioner's "Habeas Corpus Petition pursuant to the Original Habeas Corpus and Request for Dismissal of Indictment and Conviction and Request for Declaratory Judgment," filed August 23, 2006, and her "Motion for Release on Bond Pending Habeas Petition," filed September 5, 2006.

The Petitioner is serving an 84 month sentence of imprisonment in connection with her conviction for conspiracy to possess with intent to distribute cocaine. **Judgment of Conviction in a Criminal Case, filed February 15, 2005, in Criminal Case No. 1:04cr24.** On February 2, 2006, she filed a motion pursuant to 28 U.S.C. § 2255 to which she filed

addendums on March 27, 2006, and June 30, 2006. ***Barker v. United States, Civil Case No. 1:06cv24.***

On August 23, 2006, the Petitioner filed this petition, claiming that both 28 U.S.C. §§ 2241 and 2255 are unconstitutional, null and void. Because the Petitioner has a pending motion pursuant to § 2255, the undersigned, in accordance with the teachings of the United States Fourth Circuit Court of Appeals, will require the Petitioner to elect which of the pending actions she wishes to proceed. ***Walker v. Connor, 72 F. App'x 3 (4th Cir. 2003) (citing United States v. Emmanuel, 288 F.3d 644 (4th Cir. 2002)).***

IT IS, THEREFORE, ORDERED that on or before 30 days from entry of this Order, the Petitioner shall advise the Court in writing whether she intends to proceed with her motion pursuant to 28 U.S.C. § 2255 or whether she intends to proceed with her petition for a writ of habeas corpus.

Signed: October 2, 2006



Lacy H. Thornburg
United States District Judge

